

NOT FOR PUBLICATION

APR 28 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUANGHAO ZHAO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 05-76601

Agency No. A96-061-041

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 22, 2008<sup>\*\*</sup>

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Guanghao Zhao, a native and citizen of China, petitions *pro se* for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum,

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. §1252. We review for substantial evidence, *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and we dismiss in part, and deny in part the petition for review.

We lack jurisdiction to review the IJ’s determination that Zhao’s application for asylum was untimely because Zhao’s arrival date could not be considered to be an undisputed fact. *See Ramadan v. Gonzales*, 479 F.3d 646, 657 (9th Cir. 2007) (per curiam).

Substantial evidence supports the adverse credibility determination based upon Zhao’s demeanor while testifying because the IJ identified Zhao’s hesitation and evasiveness with sufficient particularity to support the demeanor finding. *See Arulampalam v. Ashcroft*, 353 F.3d 679, 686 (9th Cir. 2003). Additionally, Zhao testified inconsistently about when he made the decision to seek asylum and whether government officials came to his home. *See Li*, 378 F.3d at 962. We therefore deny the petition with respect to Zhao’s withholding of removal claim.

The IJ properly denied CAT relief because Zhao did not establish that it was more likely than not that he will be tortured if returned to China. *See* 8 C.F.R. 1208.16(c)(2); *Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**